

1 UNITED STATES DISTRICT COURT  
2 DISTRICT OF NEVADA

3 MALCOLM GRAY,

4 Plaintiff

Case No. 2:18-cv-01618-JAD-GWF

ORDER

5 v.

6 DAVE DZURUNDA et al.,

7 Defendants  
8

9 **I. DISCUSSION**

10 On January 29, 2019, the Court issued a screening order permitting some claims  
11 to proceed and dismissing other claims with leave to amend.<sup>1</sup> (ECF No. 5 at 25-26). The  
12 Court granted Plaintiff until March 1, 2019, to file an amended complaint curing the  
13 deficiencies of the complaint. (*Id.* at 26). The Court specifically stated that if Plaintiff  
14 chose not to file an amended complaint, the action would proceed on Claim 3 (retaliation  
15 against Calderin and free exercise and RLUIPA against Calderin, Everidge, and Doe  
16 members of the Religious Review Team (when Gray learns their identities)), Claim 4 (free  
17 exercise of religion against Yagao), Claim 5 (deliberate indifference to serious medical  
18 needs against Sonya, Augustine, and John Doe doctor (when Plaintiff learns his identity)),  
19 Claim 6 (retaliation against Williams and due process against Williams and Dugan), and  
20 Claim 7 (unsafe prison conditions against Miguel) only. (*Id.*) Plaintiff has not filed an  
21 amended complaint. Pursuant to the screening order, this action will proceed on Claim 3  
22 (retaliation against Calderin and free exercise and RLUIPA against Calderin, Everidge,  
23 and Doe members of the Religious Review Team (when Gray learns their identities)),  
24 Claim 4 (free exercise of religion against Yagao), Claim 5 (deliberate indifference to  
25 serious medical needs against Sonya, Augustine, and John Doe doctor (when Plaintiff  
26 learns his identity)), Claim 6 (retaliation against Williams and due process against  
27 Williams and Dugan), and Claim 7 (unsafe prison conditions against Miguel) only.

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<sup>1</sup> Plaintiff has paid the full filing fee for this civil action. (See ECF No. 2).

1       **II.       CONCLUSION**

2               For the foregoing reasons, IT IS ORDERED that, pursuant to the Court's screening  
3 order (ECF No. 5), this action will proceed on Claim 3 (retaliation against Calderin and  
4 free exercise and RLUIPA against Calderin, Everidge, and Doe members of the Religious  
5 Review Team (when Gray learns their identities)), Claim 4 (free exercise of religion  
6 against Yagao), Claim 5 (deliberate indifference to serious medical needs against Sonya,  
7 Augustine, and John Doe doctor (when Plaintiff learns his identity)), Claim 6 (retaliation  
8 against Williams and due process against Williams and Dugan), and Claim 7 (unsafe  
9 prison conditions against Miguel) only.

10              IT IS FURTHER ORDERED that given the nature of the claim(s) that the Court has  
11 permitted to proceed, this action is STAYED for 90 days to allow Plaintiff and Defendant(s)  
12 an opportunity to settle their dispute before an answer is filed or the discovery process  
13 begins. During this 90-day stay period, no other pleadings or papers will be filed in this  
14 case, and the parties will not engage in any discovery, nor are the parties required to  
15 respond to any paper filed in violation of the stay unless specifically ordered by the court  
16 to do so. The Court will refer this case to the Court's Inmate Early Mediation Program,  
17 and the Court will enter a subsequent order. Regardless, on or before 90 days from the  
18 date this order is entered, the Office of the Attorney General will file the report form  
19 attached to this order regarding the results of the 90-day stay, even if a stipulation for  
20 dismissal is entered prior to the end of the 90-day stay. If the parties proceed with this  
21 action, the Court will then issue an order setting a date for Defendants to file an answer  
22 or other response. Following the filing of an answer, the Court will issue a scheduling  
23 order setting discovery and dispositive motion deadlines.

24              IT IS FURTHER ORDERED that "settlement" may or may not include payment of  
25 money damages. It also may or may not include an agreement to resolve Plaintiff's issues  
26 differently. A compromise agreement is one in which neither party is completely satisfied  
27 with the result, but both have given something up and both have obtained something in  
28 return.

1 IT IS FURTHER ORDERED that if any party seeks to have this case excluded from  
2 the inmate mediation program, that party will file a "motion to exclude case from  
3 mediation" on or before 21 days from the date of this order. The responding party will  
4 have 7 days to file a response. No reply will be filed. Thereafter, the Court will issue an  
5 order, set the matter for hearing, or both.

6 IT IS FURTHER ORDERED that the Clerk of the Court will electronically SERVE  
7 a copy of this order, the original screening order (ECF No. 5) and a copy of Plaintiff's  
8 complaint (ECF No. 2) on the Office of the Attorney General of the State of Nevada, by  
9 adding the Attorney General of the State of Nevada to the docket sheet. This does not  
10 indicate acceptance of service.

11 IT IS FURTHER ORDERED that the Attorney General's Office will advise the Court  
12 within 21 days of the date of the entry of this order whether it will enter a limited notice of  
13 appearance on behalf of Defendants for the purpose of settlement. No defenses or  
14 objections, including lack of service, will be waived as a result of the filing of the limited  
15 notice of appearance.

16  
17 DATED THIS 8th day of March 2019.

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20 United States Magistrate Judge  
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1 UNITED STATES DISTRICT COURT  
2 DISTRICT OF NEVADA

3 MALCOLM GRAY,

4 Plaintiff

5 v.

6 DAVE DZURUNDA et al.,

7 Defendants

Case No. 2:18-cv-01618-JAD-GWF  
REPORT OF ATTORNEY GENERAL  
RE: RESULTS OF 90-DAY STAY

8  
9 **NOTE: ONLY THE OFFICE OF THE ATTORNEY GENERAL SHALL FILE THIS FORM.  
THE INMATE PLAINTIFF SHALL NOT FILE THIS FORM.**

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11 On \_\_\_\_\_ [*the date of the issuance of the screening order*], the Court  
12 issued its screening order stating that it had conducted its screening pursuant to 28 U.S.C.  
13 § 1915A, and that certain specified claims in this case would proceed. The Court ordered  
14 the Office of the Attorney General of the State of Nevada to file a report ninety (90) days  
15 after the date of the entry of the Court's screening order to indicate the status of the case  
16 at the end of the 90-day stay. By filing this form, the Office of the Attorney General hereby  
17 complies.

18 **REPORT FORM**

19 [Identify which of the following two situations (identified in bold type) describes the case,  
and follow the instructions corresponding to the proper statement.]

20 **Situation One: Mediated Case: The case was assigned to mediation by a court-**  
21 **appointed mediator during the 90-day stay.** [If this statement is accurate, check **ONE**  
22 of the six statements below and fill in any additional information as required, then proceed  
to the signature block.]

23 \_\_\_\_\_ A mediation session with a court-appointed mediator was held on  
24 \_\_\_\_\_ [*enter date*], and as of this date, the parties have  
25 reached a settlement (*even if paperwork to memorialize the settlement*  
26 *remains to be completed*). (*If this box is checked, the parties are on notice*  
*that they must SEPARATELY file either a contemporaneous stipulation of*  
*dismissal or a motion requesting that the Court continue the stay in the case*  
*until a specified date upon which they will file a stipulation of dismissal.*)

27 \_\_\_\_\_ A mediation session with a court-appointed mediator was held on  
28 \_\_\_\_\_ [*enter date*], and as of this date, the parties have not  
reached a settlement. The Office of the Attorney General therefore informs  
the Court of its intent to proceed with this action.

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- ☐ No mediation session with a court-appointed mediator was held during the 90-day stay, but the parties have nevertheless settled the case. *(If this box is checked, the parties are on notice that they must SEPARATELY file a contemporaneous stipulation of dismissal or a motion requesting that the Court continue the stay in this case until a specified date upon which they will file a stipulation of dismissal.)*
- ☐ No mediation session with a court-appointed mediator was held during the 90-day stay, but one is currently scheduled for \_\_\_\_\_ [enter date].
- ☐ No mediation session with a court-appointed mediator was held during the 90-day stay, and as of this date, no date certain has been scheduled for such a session.
- ☐ None of the above five statements describes the status of this case. Contemporaneously with the filing of this report, the Office of the Attorney General of the State of Nevada is filing a separate document detailing the status of this case.

\* \* \* \* \*

**Situation Two: Informal Settlement Discussions Case:** The case was NOT assigned to mediation with a court-appointed mediator during the 90-day stay; rather, the parties were encouraged to engage in informal settlement negotiations. [If this statement is accurate, check **ONE** of the four statements below and fill in any additional information as required, then proceed to the signature block.]

- ☐ The parties engaged in settlement discussions and as of this date, the parties have reached a settlement *(even if the paperwork to memorialize the settlement remains to be completed)*. *(If this box is checked, the parties are on notice that they must SEPARATELY file either a contemporaneous stipulation of dismissal or a motion requesting that the Court continue the stay in this case until a specified date upon which they will file a stipulation of dismissal.)*
- ☐ The parties engaged in settlement discussions and as of this date, the parties have not reached a settlement. The Office of the Attorney General therefore informs the Court of its intent to proceed with this action.
- ☐ The parties have not engaged in settlement discussions and as of this date, the parties have not reached a settlement. The Office of the Attorney General therefore informs the Court of its intent to proceed with this action.
- ☐ None of the above three statements fully describes the status of this case. Contemporaneously with the filing of this report, the Office of the Attorney General of the State of Nevada is filing a separate document detailing the status of this case.

Submitted this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ by:

Attorney Name: \_\_\_\_\_  
Print Signature

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